

Whether Reporters of Local Papers are allowed to see the judgment?

This appeal has been preferred by the plaintiff against the judgment and decree of the learned District Judge, Solan dismissing the suit of the plaintiff by reversing the judgment and decree passed by the learned Senior Sub Judge, Solan granting a decree of declaration that the plaintiff is the owner in possession of the suit land to the extent of share of her late father Durga Ram and that mutation No. 527, dated 24.8.1983 excluding her from inheritance of the estate of her father is not binding on her. Consequently the appellant herein was also granted a decree of permanent prohibitory injunction. The suit was contested only by defendant No. 1 Smt. Dayawanti, while the other defendants were proceeded ex parte. She tried to establish on record that she was the legally wedded wife of deceased Durga Ram and that defendants 2 to 7 were her daughters lawfully born to her from this wedlock.

On the question of inheritance, learned trial Court, on the settled issue of entitlement of the appellant for declaration that she is the sole heir of deceased Durga Ram, decided in her favour

which finding was reversed by the learned District Judge. The plaintiff is now in appeal.

This appeal was admitted by this Court on the following substantial questions of law:

1. Whether respondents failed to plead and prove their claim of having the right of succession of the estate of late Shri Durga Ram?
2. Whether the respondents have failed to plead and prove that Smt. Dayawanti was ever lawfully married?
3. Whether the respondents 2 to 7 have failed to plead and prove that they are daughters of late Shri Durga Ram and that they had right of succession of the deceased.
4. Whether adverse inference was required to be taken against the respondents, they having failed to produce documentary evidence in support of their claim of succession.

Questions 1 and 2 are taken up together for discussion. The plaintiff - appellant instituted suit when she was a minor and pleaded

that Durga Ram was her father and her mother was Kalawati alias Gungi. Her father owned and possessed with other co sharers land measuring 24 bighas 8 biswas, comprised in khasra No. 67, 68 and 69 in mauza Rajpura, Tehsil Kasauli, District Solan as per jamabandi for the year 1976-77 Ex.P-1. He was a tenant on this land but subsequently acquired proprietary rights under the tenancy laws. She pleaded that her mother Smt. Kalawati had filed a suit with respect to this suit land in the Court of learned Sub Judge, Kandaghat which was ultimately withdrawn with permission/ liberty to file a fresh suit, but before she could institute the suit, she died. Plaintiff claimed to be the sole legal heir of deceased Durga Ram and Smt. Kalawati alias Gungi. To her surprise, she found that by mutation No. 527, dated 24.8.1983, the suit land was mutated in favour of the defendants which was illegal and against her rights.

This suit was contested by defendant No. 1 pleading that defendants 2 to 7 were her daughters, she was the legally wedded wife of late Durga Ram and admitting that the plaintiff appellant

is the daughter of Smt. Gungi alias Kalawati from late Shri Durga Ram.

The first issue settled by the learned trial Court was whether the plaintiff-appellant is the sole heir of deceased Durga Ram. On consideration of the evidence of Savitri Devi, PW-1 and Khiali Ram (PW-5), Secretary, Gram Panchayat, Jabli, the Court concluded that plaintiff was the daughter of Shri Durga Ram. Proceeding further, the Court held that the record of the Gram Panchayat, Jabli, that is, the Register of Births and Deaths, shows that except Smt. Gungi alias Kalawati, no other person has been entered as a family member of Durga Ram. The evidence of DW-1 that she had married Durga Ram when she was about 8 years old and that 10 daughters were born to her out of this wedlock, was found unworthy of reliance. The learned Court holds that there was no evidence, oral or documentary, or of any witness on record worthy of credence to show that Durga Ram and defendant-respondent No. 1 had, at any time, resided together as husband and wife and she had given birth to ten children from this purported marriage. Invoking the provisions of Section 50 of the Indian

Evidence Act, the Court held that since the defendant was in the know/knowledge of said fact which only she could state and having failed to establish such fact, there was nothing on record to establish her plea that she was legally wedded wife of Durga Ram.

In appeal, the learned District Judge has considered evidence in a very cursory manner reversing these findings and ignoring the admissions made by defendant No. 1 that the plaintiff is the daughter of Durga Ram. Instead of appreciating the evidence on settled principles of law, the learned Judge has become conjectural in extracting certain portions of the statements by holding that they have become contradictions of what has been stated by witnesses in evidence without, in any manner, discussing as to whether it had made a substantive difference to the intrinsic value to be attached to the evidence. This is hardly a satisfactory way of appreciating / considering evidence by the appellate Court which would become final Court of fact. The learned Court has totally ignored the Parivar Register produced by PW-5 Shri Khiali Ram and the other evidence produced on behalf of the plaintiff

that she is the daughter of the deceased. The Court also ignored that there was no evidence on record to show that respondent No. 1 was the legally wedded wife of late Shri Durga Ram. Surely, if she had given birth to ten daughters from this marriage as alleged by her, there must have been some contemporaneous proof/ record of this fact which has not been proved on record of this case. How and in what manner she got married, has not been either pleaded or proved. Merely asserting that she was married and gave birth to ten children does not give legitimacy to her claim that she is the heir of deceased Durga Ram. This fact has neither been considered nor appreciated by the learned Court below. To say the least, the judgment is conjectural and the purported findings devoid of any substantive content.

In this view of the matter, both these questions are decided in favour of the appellant. I hold that respondents have not only failed to prove that respondent No. 1 was the legally wedded wife of Shri Durga Ram, and defendants 2 to 10 his daughters but also that they are not entitled to succeed to his estate.

On questions 3 and 4, all that need be said is that there was no pleading on the question of marriage of respondent No. 1 much-less proof that such marriage was solemnized, consummated and that the other respondents were born out of this wedlock. These questions are also decided in favour of the appellant.

For the reasons given hereinabove, this appeal is allowed. The judgment and decree of the learned Appellate Court is quashed and set aside and that of the learned trial Court is restored. There shall be no order as to costs.

August 19, 2008 (PC) .

(Dev Darshan Sud), J.